IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21..11..2007

Coram

The Hon'ble Mr. Justice K.CHANDRU

W.P. No.8974 of 2001

K.P.Backiasamy .. Petitioner

vs.

1. The Appellate Authority under
the Payment of Gratuity Act 1972 &
Regional Labour Commissioner (Central)
Chennai

2. The Controlling Authority
under the Payment of Gratuity Act 1972 &
Assistant labour Commissioner (Central) - I
Chennai

3. The Management
Combodia Mills
Ondiputhur
Coimbatore .. Respondents

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorari to call for the records relating to the proceedings of the first respondent made in Gratuity Appeal No.4 of 2000 dated 08.12.2000 in confirming the order of the second respondent made in G.A.Ms.No.17 of 1999 and quash the same.

For Petitioner : Mr.J.Pothiraj
For Respondents 1 & 2 : Mr.V.R.Thangavelu, G.A.
For Respondent 3 : Mr.John
for M/s T.S.Gopalan & Co.

ORDER

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This writ petition is filed by the employee of the third respondent Mill challenging the order dated 08.12.2000 passed by the first respondent appellate authority in Gratuity Appeal No. 4 of 2000 confirming the order of the second respondent controlling authority dated 28.02.2000 made in Gratuity Application No. 17 of 1999.

2. The petitioner, an employee of the third respondent Mill resigned from the service on 20.8.1998 after completing 14 years of service. He filed an application dated 31.5.1999 claiming payment of

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gratuity. He gave a notice dated 20.11.1998 to the third respondent Management stating that his gratuity was paid only for a period of 8 years leaving out his 6 years service. The said application was taken on file as G.A. No.17 of 1999.

3. The third respondent filed a counter affidavit stating that the petitioner ought to have filed an application within 90 days from 05.10.1998 but it was filed after 236 days. Therefore, it is time barred.

4. The second respondent Controlling Authority accepted the said submission of the Management and dismissed the application stating that since no delay application has been filed, the delay cannot be condoned. As against the same, an appeal was filed before the first respondent appellate authority. In the grounds of appeal, it was stated by the petitioner that he was an illiterate person and physically handicapped and it was also submitted before the Controlling Authority the reason for not submitting the application on time. His application was not returned raising maintainability of the application. He further stated that had he been given such a notice, he would have submitted necessary reason for submitting a delayed application. The Appellate Authority, who took up the matter as G.A. No. 4 of 2000, agreed with the submission of the Management and rejected the same confirming the order of the Controlling Authority. As against this order, the present writ petition has been filed.

5. I have heard the arguments of Mr.J.Pothiraj, learned counsel appearing for the petitioner, Mr.V.R.Thangavelu, learned Government Advocate representing the respondents 1 and 2 and Mr. John, learned counsel appearing for M/s T.S.Gopalan & Co. for the third respondent and have perused the records.

6. The questions that arise for consideration in this petition are whether there is any limitation prescribed for presenting an application before the controlling authority and secondly, whether the action of the respondents 1 and 2 in rejecting the claim of the petitioner solely on the ground of delay is justified.

7. It has been held by the Supreme Court that the Payment of Gratuity Act [for short, 'Act'] is a special law providing both for the right as well as the forum for recovery. The Act as well as the Rules framed thereunder prescribe a scheme for payment of Gratuity. In fact, there is an obligation on the part of the employer to settle the gratuity immediately within 30 days of the contingent contemplated under the Act, viz., death, resignation or retirement, takes place. It is thereafter, the beneficiary is expected to send notice on the prescribed format to the employer and the Management is to send a reply to the said demand again in a prescribed format. It is only when the employer refuses or disputes, the workman is bound to take up the mater before the authority.

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8. In the present case, when the workman sent a notice in Form I under Rule 10(1), there is no reply from the employer and they have also not settled the gratuity within the due date. While for filing an appeal, Section 7(7) itself prescribes a time limit, for presenting an application before the Controlling Authority, under the Rule, no delegation has been given for the State to make the rule relating to limitation. In any event, the delay in filing the application is not unduly long. On the contrary, as held by the Patna High Court in its decision reported in 1998 (3) LLN 484 [Mineral Area Development Authority v. State of Bihar and others], the scheme of the Act must be kept in mind and it is only then, the application will have to be decided. Similar view was also expressed by the Allahabad High Court in its decision reported in 1999 (3) LLN 62 [Rajendra Deva v. Additional Labour Commissioner, Kanpur and others]. This fact has not been taken into account by the Appellate Authority. The Appellate Authority also did not consider the grounds raised by the petitioner and instead of returning the application on the ground of delay, his petition was numbered by the controlling authority. Therefore, there was no occasion for the petitioner to state the reasons for the delay. In any event, considering the overall circumstances of the case, to deny the petitioner the legitimate gratuity on the so-called ground of delay, is unjustified.

9. In view of the above, the writ petition stands allowed and both the orders of the respondents 1 and 2 stand set aside. The Gratuity application filed by the petitioner in G.A. No. 17 of 1999 will stand restored on the file of the second respondent, who shall dispose of the same on merits after due notice to both the parties. Since it is a matter of nine years old, the second respondent is hereby directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Regional Labour Commissioner (Central)
Chennai

2. The Assistant labour Commissioner (Central) - I
Chennai

+ 1 CC To Mr.T.S.Gopalan & Co., Advocate SR NO.68809

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